

DE 97-179

IMPLEMENTATION OF THE FCC'S ORDER ON UNIVERSAL SERVICE PURSUANT TO
TELECOMMUNICATIONS ACT OF 1996

Petitions for Designation as Eligible
Telecommunications Carriers

Order Designating Eligible Telecommunications Carriers

O R D E R N O. 22,793

November 26, 1997

APPEARANCES: Victor D. Del Vecchio, Esq. on behalf of B Atlantic; Devine, Millimet & Branch by Anu R. Mullikin, Esq. on behalf of Dunbarton Telephone Company, Inc., Granite State Teleph Inc., Merrimack County Telephone Co. Inc., Contoocook Valley Telephone Co. Inc., Hollis Telephone Company, Wilton Telephone Company, Bretton Woods Telephone Company, Northland Telephone Com of Maine, Inc., and Dixville Telephone Company; James A. Sanborn o behalf of Union Telephone Company; John C. Lightbody, Esq. on beh of Kearsarge Telephone Company, Chichester Telephone Company, and Meriden Telephone Company; Swidler & Berlin by Michael R. Romano Sprint Spectrum, LP.; the Office of the Consumer Advocate by Jame Anderson, Esq. on behalf of residential ratepayers, and E. Barcla Jackson, Esq. on behalf the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On May 8, 1997, the Federal Communications Commission (FCC) issued Order No. 97-157 (Universal Service Order) in CC Doc 96-45, establishing the requirements for receiving federal univer service funding which subsidizes service to low income consumers. Pursuant to the Universal Service Order, by December 31, 1997, th New Hampshire Public Utilities Commission (Commission) must forma designate Eligible Telecommunications Carriers (ETCs). ETCs are carriers eligible under 47 U.S.C. §214(e) of the Communications Ac

1934 as amended by §102 of the Telecommunications Act of 1996 (TA) and under 47 C.F.R. §54, to receive federal universal service funding.

Between August 29, 1997 and September 17, 1997, the Commission received petitions for ETC designation from the following carriers: Merrimack County Telephone Company, Contoocook Valley Telephone Company, Dunbarton Telephone Company, Bretton Woods Telephone Company, Hollis Telephone Company, Wilton Telephone Company, Northland Telephone Company of Maine, Inc., Granite State Telephone Company, Inc., (collectively, the Independents), and Union Telephone Company (Union). As part of their petitions for ETC designation, Union and the Independents included petitions for recognition that they qualify as rural telephone companies pursuant to the definition contained in Section §3(a)(2)(47) of the TAct as amended 47 U.S.C. 153 of the Communications Act of 1934, and further detailed at 47 C.F.R. §51.5.

On September 23, 1997, the Commission issued an Order of Notice consolidating the petitions into one docket, setting a prehearing conference for October 8, 1997, and making the following additional companies mandatory parties to the docket: Bell Atlantic, Dixville Telephone Company, Meriden Telephone Company, Chichester Telephone Company, and Kearsarge Telephone Company. By letter dated

October 2, 1997, Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint PC filed a Motion to Intervene.

At the duly noticed prehearing conference, the Parties and Staff, in response to the Commission's direction, proposed an accelerated procedural schedule which would permit timely completion. There being no objection to the intervention of Sprint PCS, the Commission granted the requested intervention.

Following the prehearing conference, the parties and Staff participated in technical discussions during which they agreed to stipulate to a resolution of the issues raised in this proceeding.

At a hearing on November 5, 1997, Staff witness Thomas Lyle presented the Stipulation for the Commission's consideration.

II. POSITION OF THE PARTIES AND STAFF

By Stipulation, the Parties and Staff agreed on a series of facts which, they contend, constitute evidence that each of the signatory carriers qualify as an ETC. The facts agreed to are stated below.

1. Each of the signatory carriers is a telecommunications carrier as defined by §3(a)(2)(49) of the TAct, and an incumbent local exchange carrier (ILEC), as defined by 47 U.S.C. §251(h)(1) for its designated service area.

2. Each of the signatory carriers directly or indirectly

provides the following services, as those services are described 47 C.R.R. §54.101(a), to all customers in its service area on a non-discriminatory basis, using either its own facilities or a combination of its facilities and resale of another carrier's services in accordance with 47 C.F.R. §54.201(d):

- (1) Voice grade access to the public switched network;
- (2) Local usage, i.e., an amount of minutes of use of exchange service provided free of charge to end users in accordance with the carrier's tariff;
- (3) Dual tone multi-frequency signaling or its functional equivalent (a.k.a. "Touch Tone" service);
- (4) Single party service or its functional equivalent;
- (5) Access to emergency services for customers who dial 911;
- (6) Access to operator services;
- (7) Access to interexchange service;
- (8) Access to directory assistance; and
- (9) Toll limitation for qualifying low-income consumers, consistent with available technology.

3. With regard to item 2(1) above, 47 C.F.R. §54.101(a)(1) states that voice grade access shall occur within the frequency range between 500 Hertz and 4000 Hertz, whereas voice grade access occurs within the wireline telephone industry at the standard frequency range between approximately 300 Hertz and 3000 Hertz. The FCC is currently considering changing its definition of voice grade access.

to more closely match the industry standard. Should the FCC not change its definition of voice grade access, in order to maintain status each signatory carrier will provide such access in the broad frequency range within a reasonable period of time unless a waiver is granted or compliance with the definition is stayed or vacated.

4. With regard to item 2(9) above, each of the signatory carriers can provide toll denial services which prevent use of the access line to place outgoing toll calls, in accordance with 47 C.F.R. §54.400(a)(2). Because of technical limitations, currently none of the signatory carriers can provide toll control services in accordance with 47 C.F.R. §54.400(a)(3)¹. A petition is currently pending before the FCC for reconsideration or clarification as to whether toll limitation service must include toll control. Should the FCC decide that toll control service is mandatory, the signatory carriers agree to provide toll control, assuming technical capability, within one year of the release of the FCC's decision, provided the requirement is not waived, stayed, or vacated.

5. Each signatory carrier agrees to file tariffs with the Commission for a low-income Lifeline service, as defined in 47 C.F.R. §54.401, in a form substantially similar to an illustrative tariff.

¹Toll denial means a complete block of all outgoing toll calls. Toll control means a cap on monthly toll billings, after which outgoing toll calls are blocked.

attached to the Stipulation, effective January 1, 1998.

6. Each signatory carrier agrees to advertise within its designated service area the availability of and prices for each of the services it currently provides relevant to ETC status. Each carrier agrees to advertise the availability of Lifeline service including a description of the service and the eligibility requirements in the introductory pages of the carrier's telephone directories for its service area, effective with future printings. Each carrier agrees to publish a descriptive pamphlet, developed by the Commission Staff and approved by the Commission, which will contain an application form for both Lifeline and Link-Up². As a part of further publicity for the Lifeline and Link-Up programs, the Parties and Staff stipulated that the Commission should issue a press release informing the public of the availability of those services for qualifying low-income customers.

III. COMMISSION ANALYSIS

We appreciate the efforts of the Parties and Staff to complete this docket in an expedited fashion. The public interest is best served by meeting the requirements laid out by the FCC in order to preserve New Hampshire consumers' opportunity to benefit from

²Lifeline is a low-income assistance program that provides discounted monthly local exchange service to eligible customers. Link-Up is a low-income assistance program that provides discount installation charges for new service to eligible customers.

federal universal service funds. Towards this end, we issued Order No. 22,748 (October 7, 1997) establishing a Lifeline program for income customers. Today we satisfy another requirement of the Universal Service Order by designating ETCs.

Under the Universal Service Order, as of January 1, 1998, only ETCs will be eligible to receive support from the federal universal support mechanisms. Although we note the two elements which reconsiderations are pending before the FCC, i.e., voice grade and toll control, we will nonetheless approve the interim resolution of those issues as provided in the Stipulation. We also note that the Stipulation does not include a statement that the signatory carriers provide the Link-Up program to qualifying low-income consumers, as is required by 47 C.F.R. §54.411. We find that each of the signatory carriers already provides Link-Up in its respective service area and, therefore, the FCC requirement is being met.

We find that the elements necessary for qualification as an ETC have been met by each of the signatory carriers and that the public interest, convenience and necessity are best served by designating each as an ETC under 47 U.S.C. §214(e) and in compliance with 47 C.F.R. §54.201.

The Universal Service Order delegated to the states the responsibility of designating carriers that meet the requirements

47 U.S.C. §214(e)(2) for "eligible telecommunications carriers for service area designated by the State Commission." The FCC determined that neither the states nor the FCC itself is authorized to adopt criteria for ETCs beyond those set forth in §214(e)(1). Universal Service Order ¶135. Responsibility for defining service areas is delegated to the states, but the FCC indicated its preference that states not "adopt as service areas the study areas³ of large ILECs." Universal Service Order ¶185.

Given that collectively the signatory carriers serve the entire State of New Hampshire and that it is necessary to promptly define service areas in order to effectuate ETC status, on an interim basis we will define each signatory's service area, for purposes of universal service support, as its current respective service area in New Hampshire. Carriers seeking ETC designation in the future shall identify a proposed service area in their application to the Commission, at which time we will consider the appropriateness of proposed service area, together with our consideration of the carrier's compliance with the ETC criteria.

The Independents and Union requested that we find that they are rural telephone companies as defined at 47 C.F.R. §51.5.

³A "carrier's study area" is the geographic area designated by the FCC for cost study purposes in determining the cost of access. For Bell Atlantic, the carrier study area is the entire State of New Hampshire.

Designation as a rural telephone company by a state commission is required by the TAct. Nonetheless, we find that all of the signal carriers, with the exception of Bell Atlantic, meet the above-mentioned definition of rural telephone companies for the purpose of universal service.

Based upon the foregoing, it is hereby

ORDERED, that Sprint Spectrum, L.P.'s Motion to Intervene is GRANTED; and it is

FURTHER ORDERED, that Merrimack County Telephone Company, Contoocook Valley Telephone Company, Dunbarton Telephone Company, Bretton Woods Telephone Company, Hollis Telephone Company, Wilton Telephone Company, Northland Telephone Company of Maine, Inc., Granite State Telephone Company, Inc., Union Telephone Company, Bell Atlantic, Dixville Telephone Company, Meriden Telephone Company, Chichester Telephone Company, and Kearsarge Telephone Company are designated as ETCs; and it is

FURTHER ORDERED, that the service areas for which each designated ETC is eligible to receive federal universal service support is its respective current service area in New Hampshire; it is

FURTHER ORDERED, that each designated ETC, with the exception of Bell Atlantic, is a rural telephone company as defined by 47 U.S.C. §153(47) for purposes of universal service.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of November, 1997.

Douglas L. Patch
Chairman

Bruce B. Ellsworth
Commissioner

Susan S. Geiger
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary